

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

Case No. 8:18-cr-535-T-33JSS

BRANDY M. MCKENNEY

ORDER

This matter is before the Court on consideration of United States Magistrate Judge Julie S. Sneed's Report and Recommendation (Doc. # 78), filed on May 9, 2019, recommending that Defendant Brandy M. McKeney's Motion to Suppress (Doc. # 19) be denied. McKeney filed an Amended Objection (Doc. # 80) on May 23, 2019, and the United States responded to the Amended Objection on May 30, 2019. (Doc. # 89). The Court held oral argument on the Amended Objection on June 3, 2019. (Doc. # 90).

Upon review, the Court accepts and adopts the Report and Recommendation, overrules the Amended Objection, and denies McKeney's Motion.

Discussion

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982). In the absence of specific objections, there is no requirement that a district judge review factual findings *de novo*, Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the court may accept, reject or modify, in whole or in part, the findings and recommendation. 28 U.S.C. § 636(b)(1)(C). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. See Cooper-Houston v. S. Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994); Castro Bobadilla v. Reno, 826 F. Supp. 1428, 1431-32 (S.D. Fla. 1993), aff'd, 28 F.3d 116 (11th Cir. 1994).

When considering a report and recommendation, a district judge may "hear additional testimony or the same testimony all over again if [she] decide[s] that would be beneficial in determining the motion." United States v. Marshall, 609 F.2d 152, 154 (5th Cir. 1980). But a district judge "is not required to rehear witness testimony when accepting a magistrate judge's credibility findings." United States v. Cofield, 272 F.3d 1303, 1305 (11th Cir. 2001). Generally,

however, a district judge "must rehear the disputed testimony before rejecting a magistrate judge's credibility determinations." Id. at 1306.

In her Amended Objection and at oral argument, McKeney challenged Judge Sneed's credibility determination for the two police officers who testified at the evidentiary hearing on the Motion to Suppress. While the Court understands McKeney's arguments and concerns, the Court defers to Judge Sneed's credibility determination.

Importantly, Judge Sneed was able to observe the officers' "forthright demeanor on the stand" at the April 24, 2019, evidentiary hearing and considered the officers' "interests in testifying, and the consistency of their testimony" in making her credibility determination. (Doc. # 78 at 8-9); see United States v. Ramirez-Chilel, 289 F.3d 744, 750 (11th Cir. 2002) (deferring to the magistrate judge's credibility determination where the magistrate took "into account the interests of the witnesses, the consistencies or inconsistencies in their testimonies, and their demeanor on the stand"). And, crediting the officers' testimony that they observed McKeney driving with her high beams activated despite the presence of oncoming traffic, the Court agrees

with Judge Sneed that the officers had probable cause to perform the traffic stop of McKeney's car.

Thus, upon due consideration of the record, including Judge Sneed's Report and Recommendation as well as McKeney's Amended Objection thereto, the Court overrules the Amended Objection, adopts the Report and Recommendation, and denies the Motion to Suppress. The Court agrees with Judge Sneed's detailed and well-reasoned findings of fact and conclusions of law. The Report and Recommendation thoughtfully addresses the issues presented, and the Amended Objection does not provide a basis for rejecting the Report and Recommendation.

Accordingly, it is now

ORDERED, ADJUDGED, and DECREED:

- (1) The Report and Recommendation (Doc. # 78) is **ACCEPTED** and **ADOPTED**.
- (2) Defendant Brandy M. McKeney's Motion to Suppress (Doc. # 19) is **DENIED**.

DONE and ORDERED in Chambers in Tampa, Florida, this 7th day of June, 2019.

Virginia M. Hernandez Covington
VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE